

## Federal Acquisition Regulation

52.226-1

agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled "Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate." An offer certifying that a Canadian end product will be supplied requires the Contractor to supply a Canadian end product or, at the Contractor's option, a domestic end product.

[59 FR 548, Jan. 5, 1994, as amended at 60 FR 67518, Dec. 29, 1995; 61 FR 31649, June 20, 1996; 62 FR 262, Jan. 2, 1997; 62 FR 10710, Mar. 10, 1997]

### **52.225-22 Balance of Payments Program—Construction Materials—NAFTA.**

As prescribed in 25.305(c)(2), insert the following clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIALS—NAFTA (MAY 1997)

(a) *Definitions.* As used in this clause—

*Components* means those articles, materials, and supplies incorporated directly into construction materials.

*Construction material* means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

*Domestic construction material* means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(2) of the Federal Acquisition Regulation shall be treated as domestic.

*NAFTA country construction material* means a construction material that (1) is wholly the growth, product, or manufacture of a NAFTA country, or (2) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new

and different construction material distinct from the materials from which it was transformed.

*North American Free Trade Agreement (NAFTA) country* means Canada and Mexico.

(b) The Balance of Payments Program provides that the Government give preference to domestic construction material.

(c) The Contractor agrees that only domestic construction material or NAFTA country construction material will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for other foreign construction materials, if any, listed in this contract.

(End of clause)

[61 FR 31649, June 20, 1996, as amended at 62 FR 12702, Mar. 17, 1997]

### **52.226 [Reserved]**

### **52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.**

As prescribed in 26.104, insert the following clause:

UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (SEP 1996)

(a) For Department of Defense contracts, this clause applies only if the contract includes a subcontracting plan incorporated under the terms of the clause at 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan. It does not apply to contracts awarded based on a subcontracting plan submitted and approved under paragraph (g) of the clause at 52.219-9.

(b) *Definitions.* As used in this clause:

*Indian* means any person who is a member of any Indian tribe, band, group, pueblo or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

*Indian organization* means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

*Indian-owned economic enterprise* means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership shall constitute not less than 51 percent of the enterprise.

*Indian tribe* means any Indian tribe, band, group, pueblo or community, including native villages and native groups (including